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September 25, 2018

VIA ECF

The Honorable Judge Margo K. Brodie  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Magistrate Judge James Orenstein  
United States District Court  
for the Eastern District of New York  
225 Cadman Plaza East  
Room 1227 South  
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,  
No. 1:05-MD-1720-(MKB)(JO)

Dear Judge Brodie and Magistrate Judge Orenstein:

After preliminary approval of the prior settlement a number of issues arose related to misleading communications with class members, particularly with respect to certain third-party claims filing entities. These issues were addressed, in part, by an order that requires a statement to accompany all solicitations from third-party claims filers. This order has not been modified since the previous settlement. Class Counsel for Rule 23(b)(3) Class Plaintiffs ask the Court to require an updated statement. We raise this now because since the filing of the Rule 23(b)(3) Class Plaintiffs' Motion for Class Settlement Preliminary Approval and the filing of the Superseding and Amended Definitive Class Settlement Agreement on September 18, 2018 (ECF No. 7257), Class Counsel has received a number of calls from various third-parties seeking guidance regarding the appropriate language to use in solicitations and marketing materials.

The current order requires the following statement be made in conjunction with all marketing materials, solicitations (both in person and in writing) as well as on contracts:

1. A statement that claim forms are not yet available.
2. A statement making clear that class members need not sign up for a third-party service in order to participate in any monetary relief and explaining that no-cost assistance will be available from the Class Administrator and Class Counsel during the claims-filing period.

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3. Information directing class members to the Court-approved website for additional information.<sup>1</sup>

Below is a **current**, proper disclaimer being used by one claims-filing company:

The Second Circuit Court of Appeals reversed approval of the settlement and returned the case to the District Court on June 30, 2016. Litigation is ongoing. No claim forms are available at this time, and no claims-filing deadline exists. If another settlement is reached, no-cost assistance will be available from the Class Administrator and Class Counsel during any claims-filing period. No one is required to sign up with any third-party service in order to participate in any settlement. For additional information regarding the status of the litigation, interested persons may visit [www.paymentcardsettlement.com](http://www.paymentcardsettlement.com), the Court-approved website for this case.

Class Counsel recommends that, even prior to the determination of preliminary approval by the Court, that the required statement be updated to ensure that merchants are receiving accurate information. As Judge Gleeson observed in 2013,

It is clear to the Court that the overwhelming majority of the members of the merchant class need protection from overreaching claims filing services, and I intend to provide that protection proactively. Preventing confusion and deception before they can happen is far preferable to taking remedial measures after they happen.

ECF No. 6147 at 1. Class Counsel shares this view and seeks the Court's assistance to ensure that issues can be proactively handled. To that end, we request the Court enter an order conforming the previous order to the new circumstances by requiring the following suggested language, included in the attached proposed order, be provided to all known third-party claims filing companies<sup>2</sup>:

Plaintiffs in the Rule 23(b)(3) Class (Money Damages Class) have reached a proposed settlement in this action. Materials reflecting this proposed settlement

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<sup>1</sup> As the Court ordered: "Solicitations that do not contain the required information (as set forth above) may be deemed misleading and following notice and an opportunity to cure, those entities may be enjoined permanently from taking any role in the settlement. . . ." See ECF No. 6137 at 1.

<sup>2</sup> On September 24, 2018, Class Counsel sent a letter to known claims filing companies to provide an update on the litigation and share the proposed disclaimer language. We received a number of "bounce back" emails, but believe that approximately 50 entities received the letter.

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were filed September 18, 2018 with the Court. No claim forms are available at this time, and no claims-filing deadline exists. If the settlement is approved, no-cost assistance will be available from the Class Administrator and Class Counsel during any claims-filing period. No one is required to sign up with any third-party service in order to participate in any settlement. For additional information regarding the status of the litigation, interested persons may visit [www.paymentcardsettlement.com](http://www.paymentcardsettlement.com), the Court-approved website for this case.

Should the Court approve this language, Class Counsel will immediately notify all known third-party claims filing entities of the new language. Should the Court wish to hear from interested parties prior to making a determination regarding new language, Class Counsel can alert all known third-party claims filing companies that they will have a right to be heard prior to a determination by the Court.

Respectfully submitted,

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cc: All Counsel (via ECF)